

1 Michele R. Stafford, Esq. (SBN 172509)  
2 Matthew P. Minser, Esq. (SBN 296344)  
3 Craig L. Schechter, Esq. (SBN 308968)  
4 SALTZMAN & JOHNSON LAW CORPORATION  
5 1141 Harbor Bay Parkway, Suite 100  
6 Alameda, CA 94502  
7 Telephone: (510) 906-4710  
8 Email: [mstafford@sjlawcorp.com](mailto:mstafford@sjlawcorp.com)  
9 Email: [mminser@sjlawcorp.com](mailto:mminser@sjlawcorp.com)  
10 Email: [cschechter@sjlawcorp.com](mailto:cschechter@sjlawcorp.com)

11 Attorneys for Plaintiffs District Council 16  
12 Northern California Health and Welfare Trust Fund et. al.

13 UNITED STATES DISTRICT COURT  
14  
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA

16 DISTRICT COUNCIL 16 NORTHERN  
17 CALIFORNIA HEALTH AND WELFARE TRUST  
18 FUND, and its JOINT BOARD OF TRUSTEES;  
19 CHRIS CHRISTOPHERSEN and JOHN  
20 MAGGIORE, Trustees;

21 NORTHERN CALIFORNIA GLAZIERS,  
22 ARCHITECTURAL METAL AND GLASS  
23 WORKERS PENSION TRUST FUND, and its  
24 JOINT BOARD OF TRUSTEES; CHRIS  
25 CHRISTOPHERSEN and JEANNIE SIMPELO,  
26 Trustees;

27 NORTHERN CALIFORNIA GLAZIERS  
28 INDIVIDUAL ACCOUNT RETIREMENT TRUST  
FUND; and its JOINT BOARDS OF TRUSTEES;  
CHRIS CHRISTOPHERSEN and JEANNIE  
SIMPELO, Trustees; and,

DISTRICT COUNCIL 16 NORTHERN  
CALIFORNIA JOURNEYMAN AND  
APPRENTICE TRAINING TRUST FUND, and its  
JOINT BOARD OF TRUSTEES; CHRIS  
CHRISTOPHERSEN and JEANNIE SIMPELO,  
Trustees;

Plaintiffs,

v.

INTERIOR INSTALLATION SERVICES, INC.,  
dba Interior Retail Services, Inc., a California  
Corporation,

Defendant.

Case No.:

**COMPLAINT**

Parties

1. The District Council 16 Northern California Health and Welfare Trust Fund (“Health Fund”); Northern California Glaziers, Architectural Metal and Glass Workers Pension Trust Fund (“Pension Fund”); Northern California Glaziers Individual Account Retirement Trust Fund (“IARP Fund”); and the District Council 16 Northern California Journeyman and Apprentice Training Trust Fund (“Apprentice Fund”) are employee benefit plans as defined in the Employee Retirement Income Security Act of 1974 (“ERISA”) § 3(3), 29 U.S.C. § 1002(3). Chris Christophersen and John Maggiore are Trustees, and fiduciaries, of the Health Fund. Chris Christophersen and Jeannie Simpelo are Trustees, and fiduciaries, of the Pension Fund, the IARP Fund, and the Apprentice Fund. The Pension Fund, Health Fund, IARP Fund, and Apprentice Fund and their respective Trustees and fiduciaries, are collectively referred to herein as “ERISA Plaintiffs” or “Plaintiffs.”

2. Interior Installation Service, Inc., dba Interior Retail Services, Inc. a California Corporation (“Defendant”), is an employer by virtue of ERISA § 3(5), 29 U.S.C. § 1002(5), and NLRA § 2(2), 29 U.S.C. § 152(2).

Jurisdiction

3. Jurisdiction exists in this Court over the claims asserted by ERISA Plaintiffs by virtue of ERISA § 502, 29 U.S.C. § 1132, in that ERISA Plaintiffs seek to enforce the provisions of ERISA and the terms of their plans, seek to enjoin the acts and practices which violate ERISA, seek equitable relief to redress such violations, and seek all other appropriate relief under ERISA.

4. Jurisdiction exists in this Court over all the claims by virtue of the Labor Management Relations Act (“LMRA”) § 301, 29 U.S.C. § 185, in that Plaintiffs seek to enforce the terms and conditions of a valid Bargaining Agreement.

5. To the extent jurisdiction over any claim does not exist under ERISA or the LMRA, supplemental jurisdiction exists in this Court over such claims by virtue of 29 U.S.C. § 1367 in that they arise out of a common nucleus of operative facts that form the basis of the federal claims asserted herein, each of which has a substantial ground in federal jurisdiction.

Venue

6. Venue is conferred upon this Court by ERISA § 502, 29 U.S.C. § 1132. Where an action is brought under ERISA § 502 in a district court of the United States, it may be brought at Plaintiffs' discretion, in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found. ERISA Plaintiffs' Trust Funds are administered in this district at their principal place of business in Dublin, California. Thus, jurisdiction and venue are properly grounded with this Court.

7. Venue exists in this Court with respect to the claims under LMRA § 301, 29 U.S.C. § 185, as this Court has jurisdiction over the parties, as the Union maintains its principal place of business in this district, its duly authorized officers or agents are engaged in representing employee members in this district, and the claims arise in this district.

#### Intradistrict Assignment

8. The basis for assignment of this action to this court's Oakland Division is that all of the events and omissions giving rise to Plaintiffs' claims occurred in the County of Alameda, where ERISA Plaintiffs' Funds and the Bargained Plans are administered, and where Defendant therefore failed to fulfill its statutory and contractual obligations to Plaintiffs.

#### Bargaining Agreement

9 Defendant entered into the Northern California Glaziers Master Agreement ("Bargaining Agreement") between the Union and the Northern California Glass Management Association, requiring employer contributions to Plaintiffs' ERISA Funds, to the Union for union dues, and to the other plans more fully described in the Bargaining Agreement. Plaintiffs are third party beneficiaries of the Bargaining Agreement.

10. Under the terms of the Bargaining Agreement, Plaintiffs' Trustees are authorized to collect monies due by Defendant to the following plans: the IUPAT Finishing Trades Institute, the IUPAT Labor-Management Cooperation Initiative, the Work Preservation Fund, the Skills, Safety, Supervisor & Survival Training Awards Recognition (STAR) Program, Inc., the Northern California Glass Management Association Industry Fund, and the IUPAT Political Action Together-Political Committee (collectively referred to herein as the "Bargained Plans").

11. Under the Bargaining Agreement and the governing documents of ERISA Plaintiffs

(the “Trust Agreements”), which are incorporated into the Bargaining Agreement and made binding on Defendant, Defendant is required to regularly pay to ERISA Plaintiffs, the Bargained Plans, and the Union, certain sums of money, the amounts of which are determined by the hours worked by Defendant’s employees. Contributions are due on the fifteenth (15<sup>th</sup>) day of the month following the month hours were worked, and considered delinquent if not received by the last day of that month. Defendant is also required, pursuant to the Bargaining and Trust Agreements, to pay liquidated damages in the amount of ten percent (10%) for each delinquent contribution, but in the amount of twenty percent (20%) for each delinquent contribution which is the subject of litigation. Moreover, the Bargaining and Trust Agreements provide that interest accrues on delinquent contributions at the rates reasonably set by the Trustees from the day contributions become delinquent, which is the first (1<sup>st</sup>) day of the month following the month in which payment was due, until paid.

12. The Bargaining Agreement further requires Defendant to maintain time records or time cards, and to submit any and all relevant records to Plaintiffs for examination to determine whether Defendant is making full and prompt payment of all sums required to be paid by it to Plaintiffs. Should an audit of Defendant’s records reveal Defendant has failed to provide full and prompt payment of all sums due, Defendant must reimburse Plaintiffs for the amounts due, including audit fees, in addition to any other obligations pursuant to the Bargaining and Trust Agreements.

#### Factual Allegations

13. On several occasions, written demands were made on Defendant on behalf of Plaintiffs; to schedule an audit and provide records for examination pursuant to the terms of the Collective Bargaining Agreement and the governing documents of the ERISA Plaintiffs for the period of September 16, 2014 through the date of inspection.

14. Defendant has refused to permit an authorized representative of the Plaintiffs to examine all of Defendant’s records as necessary to determine whether Defendant has made full payment of all sums owed to the Plaintiffs for the period of September 16, 2014 through the date of inspection.

1           15.     Plaintiffs are also entitled to recover any and all other contributions, and all  
2 liquidated damages and interest on delinquent contributions not specified above, found due on  
3 timecards, further audit, or otherwise, including estimated contributions for any months Defendant  
4 failed to report to Plaintiffs, through the time of Judgment. Plaintiffs reserve the right to conduct a  
5 further audit to determine whether there are any additional amounts due from Defendant.

6                                   **FIRST CAUSE OF ACTION**  
7           **For Audit Compliance, Payment of Delinquent Contributions, Interest, Liquidated**  
8                                   **Damages, Attorneys' Fees and Costs Against Defendant**

9           16.     Plaintiffs re-allege and incorporate by reference paragraphs 1 through 15, above.

10          17.     Defendant has a contractual duty to timely pay the required contributions to  
11 Plaintiffs and the Bargained Plans, and to timely pay dues to the Union, pursuant to the Bargaining  
12 Agreement and Trust Agreements. Defendant also has a contractual duty under the Bargaining  
13 Agreement, and Trust Agreements incorporated therein, to permit an audit of its records to  
14 determine whether it is making full and prompt payment of all sums required to be paid by it to  
15 Plaintiffs, and to pay Plaintiffs all amounts found due as a result of an audit, including audit fees.

16          18.     In addition, Defendant has a statutory duty to timely make the required payments to  
17 Plaintiffs under ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

18          19.     By failing to permit the audit of all of its records and make the required payments  
19 to Plaintiffs, Defendant breached the Bargaining Agreement and is in violation of ERISA § 515,  
20 29 U.S.C. § 1145, and LMRA § 301(a).

21          20.     Defendant's failure and refusal to permit the audit and pay the required  
22 contributions was at all times, and still is, willful. Defendant continues to breach the Bargaining  
23 Agreement, and incorporated Trust Agreements, by failing to pay all amounts owed as alleged.  
24 Said refusal is unjustified and done with knowledge and intent.

25          21.     ERISA Plaintiffs are without an adequate remedy at law and will suffer continuing  
26 and irreparable injury, loss and damage unless Defendant is ordered specifically to perform all  
27 obligations required on Defendant's part to be performed under ERISA, 29 U.S.C. §§ 1101-1381,  
28 the LMRA, 29 U.S.C. §§ 141-197, and the Bargaining and Trust Agreements, and is restrained  
from continuing to refuse to perform as required thereunder.

22. This Court is authorized to issue injunctive relief based on the traditional standard. As set forth above, ERISA Plaintiffs have a strong likelihood of success on the merits. There is the possibility that ERISA Plaintiffs' Trust Funds and their participants will suffer irreparable injuries. The balance of hardships and advancement of public interest favor ERISA Plaintiffs.

23. This Complaint does not in any manner relate to statutory withdrawal liability that may or may not be assessed against Defendant. ERISA Plaintiffs expressly reserve the right to pursue any such withdrawal liability claims against Defendant as provided by ERISA Plaintiffs' Plan Documents, Trust Agreements, and the law.

### Prayer

WHEREFORE, Plaintiffs pray as follows:

1. For an order,

(a) requiring that Defendant comply with its obligations to Plaintiffs under the terms of the Bargaining Agreements and Trust Agreements, including permitting an audit of its records as requested by Plaintiffs;

(b) enjoining Defendant from violating the terms of those documents and of ERISA; and

(c) enjoining Defendant from disposing of any assets until said terms have been complied with, and from continuation or operating of Defendant's business until said terms have been complied with.

2. For a judgment against Defendant as follows:

(a) Any unpaid contributions, due at time of Judgment, including those determined as due by audit, timecards, or otherwise, including estimated contributions for any months Defendant failed to report to Plaintiffs pursuant to ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A);

i. To ERISA Plaintiffs and the Bargained Plans, in accordance with ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A) and the Bargaining Agreements;

ii. To the Union in accordance with the Bargaining Agreements.

(b) Liquidated damages on any late-paid and unpaid contributions in an amount

1 provided for under the Bargaining and Trust Agreements, and with respect to ERISA Plaintiffs,  
2 ERISA § 502(g)(2)(c), 29 U.S.C. § 1132(g)(2)(c).

3 (c) Interest on any late-paid and unpaid contributions at the rates set in  
4 accordance with the Bargaining Agreements, the Trust Agreements, and ERISA § 502(g)(2)(B),  
5 29 U.S.C. § 1132 (g)(2)(B).

6 3. Plaintiffs' reasonable attorneys' fees and costs of this action, including any audit  
7 fees, in accordance with ERISA § 502(g)(2)(D) and (E), 29 U.S.C. § 1132(g)(2)(D) and (E); and  
8 in accordance with the Bargaining Agreements for all Bargained Plans; Trust Agreements, and  
9 with LMRA § 301, 29 U.S.C. § 185, for all Plaintiffs.

10 4. That the Court retain jurisdiction of this case pending compliance with its orders.

11 5. For such other and further relief as the Court may deem just and proper.

12  
13 DATED: November 4, 2019

SALTZMAN & JOHNSON LAW CORPORATION

14  
15 By: \_\_\_\_\_/S/

16 Michele R. Stafford  
17 Attorneys for Plaintiffs, District Council 16 Northern  
18 California Health and Welfare Trust Fund, et al.  
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